Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of		
2016 Biennial Review of Telecom Regulations	)	
	)	**IB Docket No. 16-131**
	)	**ET Docket No. 16-127**
	)	**PS Docket No. 16-128**
	)	**WT Docket No. 16-138**
	)	**WC Docket No. 16-132**

REPLY COMMENTS OF SPRINT

Sprint welcomes the opportunity for the Commission to revise and remove antiquated and obsolete rules as part of the biennial review, but the Commission should not, as some commenters suggest, use the biennial review process to reverse FCC decisions that are part of a cohesive regulatory structure designed to protect competition in the telecommunications market. Instead, the Commission should take a judicious approach and carefully eliminate obsolete rules, but not use the biennial review to eliminate rules that are still relevant or to short circuit ongoing rulemaking proceedings.

I. THE COMMISSION MUST CONTINUE TO PROTECT COMPETITION BY IMPLEMENTING THE 1996 ACT

Although certain parts of the telecommunications market enjoy robust competition, other sectors still suffer from the residual effects of a century-long monopoly in telecommunications services. Competition for retail voice and broadband wireline customers remains mostly limited to the dominant ILEC and a single cable company in each region. And as the record in the business data services ("BDS") proceeding demonstrates, the large ILECs continue to dominate TDM and Ethernet access services**.** As Dr. Rysman found in his study of the BDS data collection, 99 percent

of all BDS locations are served by a duopoly at best—and a staggering 77 percent are subject to a BDS monopoly.[1] While a few non-incumbent competitive carriers have had some success in entering the enterprise and backbone markets, two of those competitors are being swallowed by dominant ILECs—XO Communications (the seventh largest Ethernet provider) by Verizon (the fourth largest) and Level 3 (the second largest) by CenturyLink (the fifth largest).

Verizon and CenturyLink have proposed wholesale dismantling of the 251/252 framework that has promoted competition over the last 20 years. Additionally, the United States Telecom Association proposes to remove all regulations that apply only to Baby Bells and ILECs. Elimination of these core competition safeguards would be a fundamental mistake and change in policy entirely inappropriate for the biennial review. Through entrenchment and massive consolidation, the Bells continue their dominant position. Nevertheless, CenturyLink, Verizon, and USTA are proposing to eliminate rules intended and designed to enable sustainable competition with dominant incumbents. Sprint opposes these measures.

A. Interconnection Regulation Remains Essential to Promoting Competition

CenturyLink seeks to eliminate ILEC interconnection obligations under Section 251.[2] Interconnection between competing networks has been at the heart of telecommunications in the United States for more than a century. Elsewhere, Sprint has pointed out the need for the Commission to take positive action to move toward settlement free, IP-based interconnection for

---

[1] Rysman Rev. White Paper at 15, Table 7.

[2] CenturyLink Comments at 10-11.

all voice traffic, regardless of whether it is wireline or wireless, TDM or VoIP.[3] But until that day comes, the Commission must ensure that, at the very least, voice interconnection under Section 251 does not wither and die, leaving smaller carriers and wireless carriers beholden to the caprice of incumbent carriers who take advantage of their entrenched position and relative market dominance to force other carriers to pay for traffic exchange rather than instituting an efficient and mutually beneficial settlement free system. Sprint exchanges traffic with hundreds of carriers, but it is the ILECs with which Sprint experiences its interconnection difficulties. Interconnection with wireless carriers and non-ILEC entities is, for the most part, at mutually agreeable locations and settlement free. Until such time as ILECs exchange traffic in the same manner, competing carriers must be able to hold them to the standards established under Section 251 with a regulatory backstop in place for dispute resolution.

B. Part 69, Subpart H Pricing Flexibility Rules[4]

In light of ongoing control of the BDS market and the demonstrated ILEC incentive and ability to use of anti-competitive lock-up terms and conditions in contracts, the commission should reject efforts of ILECs to construct further contract flexibility in the absence of meaningful price controls on non-contract offerings.

---

[3] See Comments of Sprint, *In the Matter of Petition of AT&T Services, Inc., For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Rules for Switched Access Charges and Toll Free Database Dip Charges*, WC Docket No. 16-363 (Dec. 16, 2016).

[4] CenturyLink Comments at 11-12.

C. Tariffs

Both Verizon[5] and USTA[6] have proposed eliminating tariff requirements. The monopoly-era switched access tariff regime that was erected in the 1980s was slated to be eliminated by Congress in the 1996 Telecom Act. In its place, all telecom traffic exchanges were to be governed by reciprocal compensation arrangements included in interconnection agreements. Unfortunately, asymmetric LEC switched access tariffs continue to distort the market and impede competition. These harms are well documented. The elimination of switched access tariffs is long overdue. Sprint supports the elimination of switched access tariffs coupled with strong enforcement of rules that ensure traffic is not blocked and ensure interconnection agreements contain reciprocal compensation arrangements governed by Sections 251/252 of the Act.

While switched access tariffs should be replaced by reciprocal compensation arrangements, BDS tariff requirements should remain and be strengthened. The recent BDS proceeding demonstrated that ILECs remain the dominant provider of BDS service. BDS rates should undergo the scrutiny of the tariffing process.

D. ILEC Regulation

USTA proposes to remove all rules that impose any unique regulations on Baby Bells, RBOCs, or ILECs.[7] These companies still enjoy unique structural advantages from their century-long monopoly over local services. While cable companies and CLECs have made inroads in

---

[5] Verizon Comments at 9-10.

[6] USTA Comments at 11-12.

[7] USTA Comments at 8-9.

limited circumstances, the ILECs still dominate the business data services market. Strong enforcement of 251/252 and oversight of BDS continues to be critical to competition. Due to consolidation, the RBOCs, particularly AT&T and CenturyLink, actually have much larger footprints than they did at the time the Act was written. Due to convergence and take-overs of the largest IXCs and wireless carriers, the BOCs have increased their incentive and ability to harm competition.

Until the switched access regime is eliminated and until the market for BDS is fully competitive or effectively regulated to ensure competing carriers can obtain BDS at competitive rate levels, the need remains for ILECs to maintain the legal separation between their local exchange operations and inter-exchange operations as a safeguard against anti-competitive discrimination against competing inter-exchange carriers. Accordingly, Sprint opposes CenturyLink's proposal[8] to remove Rule 64.1903 that imposes these requirements on incumbent local exchange carriers until such time as BDS rates are disciplined and until ILECs cease imposing switched access charges and instead exchange all traffic with other carriers on a reciprocal bill-and-keep basis.

II. THERE IS NO NEED TO REVISIT RECENT RULES PROMOTING COMPETIVE MARKETS

Several of the rules the ILECs have proposed for elimination are recent actions that were the result of a careful, balanced rulemaking. The fundamentals that support these rules have not

[8] CenturyLink Comments at 10.

changed since their issuance, and they should not be revisited here. The biennial review is designed to address obsolete regulations, not revisit policy decisions recently made.

A. In-Market Roaming Rights Promote Wireless Competition

The old canard that access to roaming reduces network investment is an issue that the Commission has already evaluated and thoroughly addressed twice. The Commission initially allowed host carriers to deny roaming in the name of encouraging network investment and build-out, but that approach failed. The original voice roaming rule, adopted in 2007, permitted host carriers to deny access to voice roaming in a requesting carrier's home market (*i.e.*, the home market exclusion).[9] Echoing the arguments Mobile Future makes, the Commission reasoned that "requiring home roaming could harm facilities-based competition and negatively affect build-out in these markets."[10]

Based on overwhelming evidence in the record to the contrary, however, the Commission reversed course and eliminated the home market exclusion in 2010[11] because the Commission determined that the home roaming exclusion would "discourage, rather than encourage, the facilities-based competition it sought to promote"[12] and "create disincentives to construct."[13]

---

[9] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 ¶ 48 (2007) (*2007 Report and Order*). A requesting carrier's home market was defined to include any geographic location where that carrier "holds a wireless license or spectrum usage rights (e.g., spectrum leases) . . . ." *Id.*

[10] *Id.* at ¶ 49.

[11] *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181 ¶ 18 (2010) (*2010 Report and Order*).

[12] *Id.*

[13] *Id.* at ¶ 21.

AT&T and Verizon repeated the same build-out arguments that Mobile Future now makes when the Commission proposed to adopt the data roaming rule.[14] After careful consideration, the Commission determined that the voice roaming rule's general approach also served the public interest in the data roaming context. Accordingly, data roaming requests are presumed commercially reasonable, and in the event of a dispute, the Commission will assess the commercial reasonableness of a data roaming offer based on a non-exhaustive list of 17 factors.[15]

B. Technology Transitions

The Commission is in the midst of shaping the regulatory environment to accompany the transition from TDM services to IP. As part of that transition, the Commission has enacted rules to promote competition by guiding the process by which dominant carriers retire old technologies and replace them with new.[16] CenturyLink and Verizon have proposed eliminating these rules.[17] Customers and competitors continue to rely on some of those older technologies, and the carefully thought out rules that provide notice and replacement services remain critical. The Commission should not revisit these recent rulemakings.

---

[14] *See e.g., Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411 ¶ 12 (2011) (*Data Roaming Order*), *aff'd sub nom.* Cellco Partnership v. FCC, 700 F.3d 534 (D.C. Cir. 2012).

[15] *Id.* at ¶ 86.

[16] *Ensuring Consumer Premises Equipment Backup Power for Continuity of Communications*; *Technology Transitions*; *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*; *Special Access for Price Cap Local Exchange Carriers*; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014); *Technology Transitions,* Declaratory Ruling, Second Report and Order and Order on Reconsideration, 31 FCC Rcd 8283, 8305 ¶ 65 (2016).

[17] CenturyLink Comments at 18; Verizon Comments at 10-11.

III. SPRINT SUPPORTS CERTAIN OTHER PROPOSALS

Sprint supports the efforts of other carriers and associations to eliminate obsolete rules.

A. Wireless Facilities Siting

Sprint supports Verizon's proposal[18] to revisit the Commission's determination that all licensed wireless facility construction is a federal undertaking, thereby triggering federal environmental and historic preservation laws for wireless facilities that impose high costs and delays on wireless carriers seeking to deploy 4G and 5G services, even when using minimally intrusive modern technologies and designs.

It boggles the mind that a communications provider is permitted under federal law to erect a utility pole in the right of way to provide unlicensed WiFi services, or to install numerous poles to string copper or fiber-optic cables, without triggering such reviews, but if the exact same wooden utility pole with the exact same ground disturbance is installed to provide mobile services using licensed spectrum, the carriers cannot do that without onerous regulatory burdens and costs that often exceed the cost of the entire physical deployment. Additionally, it cannot be justified that no federal regulatory review is required to construct a massive skyscraper, but if a wireless carrier wishes to place an antenna on that skyscraper that is larger than six cubic feet, the effects of that equipment on the surrounding viewsheds must be considered for adverse historical effects even when the effects of the view obstructions caused by the building itself are beyond the purview of federal regulators.

---

[18] Verizon Comments at 6-7.

B. Rate Averaging

Sprint agrees with Verizon's proposal that rules requiring rate averaging between rural and non-rural areas be repealed.[19] Sprint made the same proposal in its initial comments.[20]

C. Outage Reporting

Sprint generally supports Verizon's proposal to reform the outage reporting requirements.[21] Sprint recognizes that the Commission should be informed about network outages that affect public safety, but the rules should prioritize service restoration and not regulatory reporting.

The current rules requiring three separate reports for every network outage cause providers to direct efforts toward the reporting process, when the full focus of the network organization should always be on restoration. After an immediate notification is filed within two hours of awareness of a reportable outage, the current requirement to then file an initial report within 72 hours can detract from the important work at hand and may actually serve to delay full restoration efforts. The final report, filed within thirty days of the notification filing, provides sufficient additional detail about an outage, while affording carriers the time necessary to gather the facts and circumstances surrounding the event.[22]

---

[19] Verizon Comments at 12.

[20] Sprint Comments at 3-4.

[21] Verizon Comments at 14-15.

[22] Verizon Comments at 14.

IV. CONCLUSION

The Commission should take advantage of the biennial review to remove archaic and obsolete rules, but at the same time, ensure that any modifications do not destroy the competitive baselines that the Commission has carefully enacted.

January 3, 2017

Respectfully Submitted,

/s Keith Buell
Sprint
900 7th Street, NW
Suite 900
Washington, DC 20001
(703) 592-2560
Counsel for Sprint